Code of Judicial Administration

Rule 3-111.04. Evaluation and certification of judges and commissioners.

Intent:

To establish the procedures by which the Council will evaluate and certify judges for retention election or reappointment.

To establish the procedures by which the Council will evaluate and certify commissioners for reappointment.

Applicability:

This rule shall apply to the Judicial Council and to the judges and commissioners of the courts of record and courts not of record.

Statement of the Rule:

~~(A)~~ (1) At its meeting in December of odd-numbered years, the Council shall begin the process of determining whether the judges subject to election at the next general election meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

~~(i)~~ (1)(A) attorney and juror survey scores;

~~(ii)~~ (1)(B) judicial education records;

~~(iii)~~ (1)(C) self declaration forms;

~~(iv)~~ (1)(D) records of formal and informal sanctions by the Supreme Court; and

~~(v)~~ (1)(E) any information requested by the Council.

~~(B)(i)~~ (2)(A) Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the judges being evaluated.

~~(ii)~~ (2)(B) In a session closed in compliance with Rule 2-103, the Council shall consider the evaluation information and make a preliminary finding of whether a judge met the performance standards established by Rule 3-111.03.

~~(iii)~~ (2)(C) If the Council finds the judge met the performance standards, it is presumed the Council will certify the judge be retained in the general election. If the Council finds the judge did not meet the performance standards, it is presumed the Council will not certify the judge be

retained in the general election. The Council may certify the judge for retention election or withhold decision until after meeting with the judge.

~~(iv)~~ (2)(D) A presumption against certification may be overcome by a showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

~~(a)~~ (2)(D)(i) reliable information showing non-compliance with a performance standard; or

~~(b)~~ (2)(D)(ii) formal or informal sanctions by the Supreme Court of sufficient gravity or number or both to demonstrate lack of substantial compliance with the Code of Judicial Conduct.

~~(C)~~ (3) At the request of the Council the judge shall meet with the Council in January. At the request of the Council the presiding judge and other reviewing judge shall report to the Council any meetings held with the subject judge, the steps toward self improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the December meeting, the Administrative Office of the Courts shall deliver to the judge being evaluated notice of the Council's action and any records not already delivered to the judge. If the judge is to meet with the Council, the notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the judge prior to the January meeting.

~~(D)(i)~~ (4)(A)At its January meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to certification. The burden is on the person arguing against the presumed certification. The Council may determine the order of presentation. The Council may continue the closed meeting with the judge to the February Council meeting.

~~(ii)~~ (4)(B) At its January or February meeting in open session, the Council shall approve its final findings and certification regarding all judges standing for retention election at the next general election.

(5) Between the date of certification and the next general election, the Chief Justice shall notify the Judicial Council of any order of sanction entered by the Supreme Court against a judge certified by the Council.

(6) Between the date of certification and the next general election, a member of the Judicial Council voting in the majority may move to reconsider the certification of a judge and present to the Council facts material to certification occurring before or since certification, which, if known at the time of certification, may have led to a contrary result. If the motion to reconsider passes, the Council shall notify and meet with the judge in like manner to the notification and meeting under paragraphs (C) and (D) of this rule. After the meeting the Council shall decide in open session whether to certify the judge. If the Council changes its original certification decision, it shall use the most effective means available to publish its final decision.

~~(E)~~(7) The Council shall approve the statements and descriptions required by §20A-7-702 for the voter information pamphlet. The judge may review and edit the biographical summary. The Administrative Office of the Courts shall promptly deliver the approved statement regarding a judge to the judge and shall deliver the approved statement regarding all judges to the Lt. Governor no later than August 1. Upon delivery to the Lt. Governor, the Administrative Office of the Courts shall publish the statement regarding all judges on the Internet.

~~(F)~~(8) For municipal justice court judges, the Council shall use the same evaluation process as for judges of the courts of record, but the process shall begin in December of even numbered years, approximately 14 months prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall deliver a statement similar in content and purpose to the one described in §20A-7-702 to the respective judges and to the Mayor of the judges' jurisdictions no later than August 1 prior to the expiration of the municipal judges' terms of office. The Administrative Office of the Courts shall publish the statements on the Internet.

~~(G)~~(9) For commissioners, the Council shall use the same evaluation process as for judges, but the Council may remove the commissioner upon the same grounds and statement of reasons for which it could certify a judge not be retained. The timing of meetings shall be such as to conclude all steps at least 60 days prior to expiration of the commissioner's term of office. The Administrative Office of the Courts shall notify the commissioner of the dates of all events and meetings. The Administrative Office of the Courts shall promptly notify the presiding judge of the Council's finding, certification and statement of reasons.

Rule 3-111.05. Evaluation and certification of senior judges.

Intent:

To establish a performance evaluation program for active senior judges.

Applicability:

This rule shall apply to the Judicial Council and to active senior judges of courts of record.

Statement of the Rule:

(1) Criteria of performance. Active senior judges shall be evaluated and certified using the performance criteria in Rule 3-111.02.

(2) Evaluation information. The evaluation and certification shall be based upon performance during the senior judge's current term of office. The following information shall be used:

(A) Survey of attorneys.

(i) The Council shall measure performance by a survey of the attorneys appearing before the senior judge. The survey shall provide the opportunity for the respondent to comment to the Council ~~as well as to the senior judge~~.

(ii) The survey shall be administered by the Surveyor.

(iii) The Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the senior judge at a hearing or trial during the senior judge's current term. The senior judge shall not review the list of potential respondents. The Surveyor shall identify 180 respondents or all the attorneys appearing before the senior judge whichever is less.

(iv) The Surveyor shall report to the Council the number and percentage of respondents for each of the possible responses on each question.

(B) Survey of presiding judges and court staff. The Council shall measure performance by a survey of all presiding judges and trial court executives of districts in which the judge has been assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor.

(C) The Surveyor shall provide the Council with a report of all survey responses for the senior judge's current term.

(3) Standards of performance.

(A) Surveys. The Judicial Council shall determine whether the senior judge's scores reported on the surveys are satisfactory.

(B) Cases under advisement. The Council shall measure satisfactory performance by the self-declaration of the senior judge or by review of the records of the court. The senior judge shall demonstrate satisfactory performance by complying with the cases under advisement standard in Rule 3-111.03 for the court in which the judge has been assigned.

(C) Compliance with education standards. Satisfactory performance is established if the senior judge meets the minimum education requirements established by this Code subject to the availability of in-state education programs. The Council shall measure satisfactory performance during the current term by the self declaration of the senior judge or by review of records of the state court administrator.

(D) Substantial compliance with Code of Judicial Conduct. Satisfactory performance is established if the response of the senior judge demonstrates substantial compliance with the Code of Judicial Conduct and if the Council finds the responsive information to be complete and correct.

(E) Physical and mental competence. Satisfactory performance is established if the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4)(A) Judicial Council action. Upon application for appointment under Rule 11-201, the Administrative Office of the Courts shall provide to the Judicial Council the information submitted by the senior judge as well as survey scores and any other relevant information to the Council. The information provided to the Council shall be provided to the senior judge prior to consideration by the Council. After considering all information, the Council may certify to the Supreme Court that the applicant meets the qualifications for being an active senior judge or withhold decision until after meeting with the judge.

(B) At the request of the Council the senior judge shall meet with the Council. The Administrative Office of the Courts shall deliver to the senior judge being evaluated notice of the Council's action and any records not already delivered to the senior judge. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the senior judge is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge prior to the meeting.

(C) At the meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the senior judge adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the judge has had notice opposed to certification. The Council may determine the order of presentation.

Rule 3-408. Inventory.

Intent:

To comply with Division of Finance regulation of fixed assets.

To secure property other than fixed assets.

Applicability:

This rule shall apply to the administrative office of the courts and all courts of record.

Statement of the Rule:

(1) Fixed assets.

(A) Within their respective courts, court executives shall maintain an inventory of fixed assets with an original purchase price of $5,000 or more other than computer and recording

equipment. The court executive shall annually submit the inventory to the director of Management Services no later than April 30.

(B) The director of Management Services shall maintain an inventory of fixed assets of the administrative office and all computer and recording equipment, regardless of location, with an original purchase price of $5,000 or more.

(C) The director of Management Services shall report the inventory of fixed assets of $5,000 or more to the Division o f Finance as required by law.

(2) Property security.

(A) Within their respective courts, court executives shall maintain an inventory of property with an original purchase price of more than $500 but less than $5,000 other than computer and recording equipment. The court executive shall annually submit the inventory to the director of Management Services no later than April 30.

(B) The director of Management Services shall maintain an inventory of property of the administrative office and all computer and recording equipment, regardless of location, with an original purchase price of more than $500 but less than $5,000.

(3) Inventory procedures. The director of Management Services shall:

(A) develop procedures for implementing this rule; and

(B) develop a form for recording the following information for each fixed asset or other property:

(i) a brief description, including a serial number if any;

(ii) actual or estimated date of purchase;

(iii) actual or estimated purchase price; and

(iv) the disposition of the item.

Rule 4-201. Record of proceedings.

Intent:

To establish the means of maintaining the official record of court proceedings in all courts of record.

To establish the manner of selection and operation of electronic devices.

To establish the procedure for requesting a transcript for a purpose other than for an appeal.

Applicability:

This rule shall apply to all courts of record.

Statement of the Rule:

(1) Guidelines for court reporting methods. The official verbatim record of court proceedings shall be maintained in accordance with the following guidelines:

(A) Except as provided in this rule, a video or audio recording system shall maintain the official verbatim record of all ~~district~~ court proceedings.

(B) An official court reporter or approved substitute court reporter shall maintain the official verbatim record in ~~the following district court proceedings:~~

~~(i)~~ all ~~evidentiary hearings and trial~~ proceedings ~~and all phases of sentencing~~ in capital felonies~~;~~.

(C) At the judge's discretion and subject to availability, an official court reporter or approved substitute court reporter should maintain the official verbatim record in:

~~(ii)~~ (i) all evidentiary hearings after arraignment and ~~trial proceedings~~ all trials in first degree felonies; ~~and~~

~~(iii) at the judge's discretion, subject to availability of a court reporter,~~

~~(a)~~ (ii) in cases in which the judge finds that an appeal of the case is likely, regardless of the outcome in the trial court;

~~(b)~~ (iii) in cases in which the judge determines there is a substantial likelihood a video or audio recording would jeopardize the right to a fair trial or hearing; or

~~(c)~~ (iv) in any other proceeding or portion of a proceeding, upon a showing of good cause.

~~(C) An audio recording system shall maintain the official verbatim record of all proceedings in the Supreme Court and Court of Appeals.~~

~~(D) (i) An audio recording system shall maintain the official verbatim record in proceedings of the district court as determined by the Judicial Council.~~

~~(ii) An audio recording system may be used to maintain the official verbatim record in any hearing in a small claims case.~~

~~(E) An audio recording system shall maintain the official verbatim record of all proceedings in the juvenile court, except a juvenile court judge may use, subject to availability, an official court reporter or a video recording system:~~

~~(i) if an appeal of the case is likely regardless of the outcome in the trial court, or~~

~~(ii) in any other proceeding or portion of a proceeding, upon a showing of good cause.~~

~~(F) When the judge determines that the privacy interests of the victim of a crime, a party in a civil case or a witness outweigh the interest of the public in access to a video record of the person, the judge may record the proceeding or portion of the proceeding by use of a court reporter or an audio recording system.~~

~~(G)~~ (D) Reporters shall be assigned to cover courtroom proceedings as set forth above. In the event of a conflict in the request for an official court reporter, the trial court executive or managing reporter shall confer with the presiding judge, who shall resolve the conflict.

~~(H)~~(E) A recording technology other than the presumed technology may be used if the presumed technology is not available. The use of a technology other than the presumed technology shall not form the basis of an issue on appeal.

~~(I)~~ (F) The Administrative Office shall periodically study the state of the art of electronic recording technology and technology employed in computer integrated courtrooms and make recommendations to the Judicial Council of systems to be approved.

(2) Operating and maintaining the electronic recording system.

(A) The clerk of the court or designee shall operate the electronic recording system in the courtroom so as to accurately record the proceedings ~~before the court accurately~~. The operator shall be trained in the operation of the system. ~~A separate~~ The operator shall maintain a log of each recorded proceeding ~~shall be maintained on a form approved by the Administrative Office~~.

(B) When a video recording system is used to maintain the official verbatim record of court proceedings, at least two original recordings shall be made. One original recording and log shall be filed with the clerk of the court as part of the official court record. A second original recording shall be kept in a secure, off-site storage area. The clerk of the court shall keep the original recording at the courthouse in accordance with the record retention schedule. When an audio recording system is used to maintain the official verbatim record of court proceedings one original recording shall be made.

(C) If a proceeding is recorded by a court reporter, an electronic recording of the proceeding shall not be made, except that a judge may direct a single original of an electronic recording be made as part of the judge's notes for personal use in the deliberative process under Utah Code Section 63-2-103(18)(b)(ix).

(3) The official court record.

(A) In proceedings in which a video or audio recording system is used, the court's original video or audio ~~tape~~ record and ~~accompanying~~ log shall be the official court record. In proceedings in which an official court reporter is used, the reporter's shorthand notes shall be the official court record. The Utah Rules of Appellate Procedure govern the record on appeal.

(B) The official court record shall be filed with the clerk of the court.

(C) The clerk of the court shall be the custodian of the official court record and may release the official court record only to a judge, the clerk of the ~~appellate court~~ Supreme Court or Court of Appeals, the trial court executive, or the official court transcriber. The clerk shall enter in the docket the name of the recipient and when the official court record was released and returned. Obtaining a copy of the official court record shall be governed by rules regulating access to court records.

(4) Requests for transcripts.

(A) A request for transcript for an appeal is governed by Utah R.App.P. 11 and Utah R.App.P. 12.

(B) A request for transcript ~~for any purpose other than for an appeal~~ shall be accompanied by the fee established by Section 78-56-108 and filed with the court executive. A request for an expedited transcript shall be accompanied by the fee established by Section 78-56-108 and filed with the court executive. The court executive shall assign the preparation of the transcript in the same manner as Utah R.App.P. 12.

Rule 4-202.12. Access to electronic data elements. ***Amendments Approved Effective: October 21, 2002***

Intent:

To define the extent of access to data elements maintained in a computer data base.

To protect the right of access by the public to information regarding the conduct of court business.

To protect privacy interests from intrusion made possible by the increased accessibility of information recorded, stored, and transmitted in an electronic medium.

To protect the independence of the judicial decision making process from undue influence due to the release of court data.

Applicability:

Notwithstanding any other provision of law, this rule shall apply to all requests for data elements contained in case management applications of the court computer systems.

This rule does not apply to data elements contained in other applications on court computers.

This rule does not apply to requests for data elements by the Judicial Council and its Boards and Committees, state court judges, court commissioners, or employees of the state judiciary.

This rule imposes no obligation upon the judiciary to create a data element or to make a data element available electronically when it is not technologically feasible to do so.

Statement of the Rule:

(1) Public data only. Data elements classified by Rule 4-202.02 or other provision of law as other than public records will not be made available.

(2) Person specific data.

(A) Electronic records from which a person can be identified will be made available upon request only by inquiry of a single case or in the following indexes. An index shall contain only other index information.

(i) attorney name.

(ii) case number.

(iii) case status.

(iv) civil case type or criminal violation.

(v) civil judgment or criminal disposition.

(vi) daily calendar.

(vii) file date.

(viii) party name.

(B) Electronic records from which a person can be identified will include only the following data elements. Other data elements are private.

(i) amount in controversy.

(ii) arrest date.

(iii) bail amount.

(iv) case number.

(v) case status.

(vi) case type.

(vii) civil judgment amount balance due.

(viii) civil judgment amount credit.

(ix) civil judgment amount paid.

(x) civil judgment amount total.

~~(xi) civil judgment creditor's address.~~

~~(xii)~~(xi) civil judgment date.

~~(xiii) civil judgment debtor's address.~~

~~(xiv)~~(xii) civil judgment debtor’s service of process address.

~~(xv)~~(xiii) civil judgment debtor's social security number.

~~(xvi)~~(xiv) civil judgment debtor's driver license number.

~~(xvii)~~(xv) criminal finding code.

~~(xviii)~~(xvi) criminal finding date.

~~(xix)~~(xvii) criminal sentence.

~~(xx)~~(xviii) date of birth.

~~(xxi)~~(xix) disposition type.

~~(xxii)~~(xx) domestic violence flag.

~~(xxiii)~~(xxi) file date.

~~(xxiv)~~(xxii) judge assigned.

~~(xxv)~~(xxiii) judge disposition.

~~(xxvi)~~(xxiv) law enforcement agency.

~~(xxvii)~~(xxv) offense tracking number.

~~(xxviii)~~(xxvi) party ~~city~~ address.

~~(xxix)~~(xxvii) party name.

~~(xxx)~~(xxviii) party type.

~~(xxxi) party zip code.~~

~~(xxxii)~~(xxix) plea date.

~~(xxxiii)~~(xxx) plea.

~~(xxxiv)~~(xxxi) stay date.

~~(xxxv)~~(xxxii) stay reason.

~~(xxxvi)~~(xxxiii) violation code.

~~(xxxvii)~~(xxxiv) violation date.

~~(xxxviii)~~(xxxv) violation description.

(3) Medium of transmission.

(A) The judiciary may use any convenient medium for transmission of requested data elements. The judiciary shall use the medium requested if the medium is available and does not interfere with court business. The data may be transmitted by means of public on-line services or copied to floppy disk, compact disk, or other storage medium.

(B) Public data elements not included within paragraph (2) may be made available orally, in writing, or by permitting inspection or copying of public records that contain the information. Data elements not included within paragraph (2) shall not be made available through the case management applications of the court computer systems nor, except as provided within paragraph (4), through a report generated by the case management applications of the court computer systems.

(4) Reports. If a report used within the judiciary is prepared from or contains case management data elements, the report shall be made available only if:

(A) all of the data elements in the report would have been made available under this rule;

(B) the report is of summary data; or

(C) the Judicial Council classifies the report as a public record.

(5) Data quality. Data elements provided under this rule represent information furnished to the court by parties, lawyers, and others. Data elements provided under this rule represent the best effort of the judiciary to record information accurately and timely. However, the judiciary is not responsible for incomplete or erroneous information.

(6) Requests. Requests for data elements are subject to the procedures for requests for records established in Rules 4-202.04, 4-202.05, and 4-202.06. Subscription to public on-line services is deemed a request for any information posted to public on-line services. Subscribers to public on-line services are subject to the restrictions of this rule.

(7) Fees. The fees for requests for data elements shall be as established in Rule 4-202.08.

Rule 4-408.01. Responsibility for administration of trial courts.

Intent:

To designate the court locations administered directly through the administrative office of the courts and those administered through contract with local government pursuant to ~~§~~ Utah Code Section 78-3-21.

Applicability:

This rule shall apply to the trial courts of record and to the administrative office of the courts.

Statement of the Rule:

(1) All locations of the juvenile court shall be administered directly through the administrative office of the courts.

(2) All locations of the district court shall be administered directly through the administrative office of the courts, except the following, which shall be administered through contract with county or municipal government pursuant to ~~§~~ Utah Code Section 78-3-21: Fillmore, Junction, ~~Kanab,~~ Loa, Manila, Manti, Morgan, Panguitch, Randolph, and Salem.

Rule 4-903. Uniform custody evaluations.

Intent:

To establish uniform guidelines for the preparation of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

(1) Custody evaluations shall be performed by persons with the following minimum qualifications:

(A) Social workers who hold the designation of Licensed Clinical Social Worker or equivalent license ~~and are licensed~~ by the state in which they practice may perform custody evaluations within the scope of their licensure.

(B) Doctoral level psychologists who are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(C) Physicians who are board certified in psychiatry and are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(D) Marriage and family therapists who hold the designation of Licensed Marriage and Family Therapist (Masters level minimum) or equivalent license by the state in which they practice may perform custody evaluations within the scope of their licensure.

(2) Every motion or stipulation for the performance of a custody evaluation shall include:

(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(C) specific factors, if any, to be addressed in the evaluation.

(3) Every order requiring the performance of a custody evaluation shall:

(A) require the parties to cooperate as requested by the evaluator;

(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(C) assign responsibility for payment;

(D) specify dates for commencement and completion of the evaluation;

(E) specify any additional factors to be addressed in the evaluation;

(F) require the evaluator to provide written notice to the court, counsel and parties within five business days of completion (of information-gathering) or termination of the evaluation and, if terminated, the reason;

(G) require counsel or parties to schedule a settlement conference with the court and the evaluator within 45 days of notice of completion or termination unless otherwise directed by the court so that evaluator may issue a verbal report~~.~~; and

(H) require that any party wanting a written custody evaluation to be prepared give written notice to the evaluator after the settlement conference.

(4) In divorce cases where custody is at issue, one evaluator may be appointed by the court to conduct an impartial and objective assessment of the parties and submit a written report to the court. When one of the prospective custodians resides outside of the jurisdiction of the courttwo individual evaluators may be appointed. In cases in which two evaluators are appointed, the court will designate a primary evaluator. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria for the evaluation and shall submit only one joint report to the court.

(5) The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished by assessing the prospective custodians' capacity to parent, the developmental, emotional, and physical needs of the child, and the fit between each prospective custodian and child. Unless otherwise specified in the order, evaluators must consider and respond to each of the following factors:

(A) the child's preference;

(B) the benefit of keeping siblings together;

(C) the relative strength of the child's bond with one or both of the prospective custodians;

(D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;

(E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:

(i) moral character and emotional stability;

(ii) duration and depth of desire for custody;

(iii) ability to provide personal rather than surrogate care;

(iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;

(v) reasons for having relinquished custody in the past;

(vi) religious compatibility with the child;

(vii) kinship, including in extraordinary circumstances stepparent status;

(viii) financial condition; and

(ix) evidence of abuse of the subject child, another child, or spouse; and

(F) any other factors deemed important by the evaluator, the parties, or the court.

(6) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).

(7) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.

Advisory Committee Note. The qualifications enumerated in this rule are required for the performance of a custody evaluation. However, if the qualifications are met, a practitioner from another state with a different title will not be barred from performing a custody evaluation.

Rule 6-401. Domestic relations commissioners.

Intent:

To identify the types of cases and matters ~~which~~ commissioners are authorized to hear, to identify the types of relief ~~which~~ commissioners may recommend and to identify the types of final orders ~~which may be issued by~~ commissioners may issue.

To establish a procedure for judicial review of commissioners' decisions.

Applicability:

This rule shall govern all domestic relations court commissioners serving in the District Courts.

Statement of the Rule:

(1) Types of cases and matters. All domestic relations matters filed in the district court in counties where court commissioners are appointed and serving, including all divorce, annulment, paternity and spouse abuse matters, orders to show cause, scheduling and settlement conferences, petitions to modify divorce decrees, scheduling conferences, and all other applications for relief, shall be referred to the commissioner upon filing with the clerk of the court unless otherwise ordered by the Presiding Judge of the District.

(2) Authority of court commissioner. Court commissioners shall have the following authority:

(A) Upon notice, require the personal appearance of parties and their counsel;

(B) Require the filing of financial disclosure statements and proposed settlement forms by the parties;

(C) Obtain child custody evaluations from the Division of Family Services pursuant to Utah Code ~~Ann.~~ Section 62A-4-106, or through the private sector;

(D) Make recommendations to the court regarding any issue, including a recommendation for entry of final judgment, in domestic relations or spouse abuse cases at any stage of the proceedings;

(E) Require counsel to file with the initial or responsive pleading, a certificate based upon the facts available at that time, stating whether there is a legal action pending or previously adjudicated in a district or juvenile court of any state regarding the minor child(ren) in the current case;

(F) At the commissioner's discretion, and after notice to all parties or their counsel, conduct evidentiary hearings consistent with paragraph (3)(C) below;

(G) Impose sanctions against any party who fails to comply with the commissioner's requirements of attendance or production of discovery;

(H) Impose sanctions against any person who acts contemptuously under Utah Code ~~Ann.~~ Section 78-32-10;

(I) Issue temporary or ex parte orders;

(J) Conduct settlement conferences with the parties and their counsel ~~for the purpose of facilitating settlement of any or all issues~~ in a domestic relations case. Issues ~~which~~ that cannot be ~~agreed upon by the parties at the settlement conference~~ settled shall be certified to the district court for trial; and

(K) Conduct pretrial conferences with the parties and their counsel on all domestic relations matters unless otherwise ordered by the presiding judge. The commissioner shall make recommendations on all issues under consideration at the pretrial and submit those recommendations to the district court.

(3) Duties of court commissioner. Under the general supervision of the presiding judge, the court commissioner has the following duties prior to any domestic matter being heard by the district court:

(A) Review all pleadings in each case;

(B) Certify those cases directly to the district court that appear to require a hearing before the district court judge;

(C) Except in cases previously certified to the district court, conduct hearings with parties and their counsel for the purpose of submitting recommendations to the parties and the court;

(D) Coordinate information with the juvenile court regarding previous or pending proceedings involving children of the parties; and

(E) Refer appropriate cases to mediation programs if available.

~~(4) Objections. With the exception of pre-trial orders, the commissioner's recommendation is the order of the court until modified by the court. Any party objecting to the recommended order shall file a written objection to the recommendation with the clerk of the court and serve copies on the commissioner's office and opposing counsel. Objections shall be filed within ten days of the date the recommendation was made in open court or if taken under advisement, ten days after the date of the subsequent written recommendation made by the commissioner. Objections shall be to specific recommendations and shall set forth reasons for each objection.~~

~~(5) Judicial review. Cases not resolved at the settlement or pretrial conference shall be set for trial on all issues not resolved. All other matters shall be reviewed in accordance with Rule 4-501.~~

~~(6)~~(4) Prohibitions.

(A) Commissioners shall not make final adjudications of domestic relations matters.

(B) Commissioners shall not serve as pro tempore judges in any matter, except as provided by Rule of the Supreme Court.

Rule 6-601. Mental health commissioners.

Intent:

To identify the types of cases and matters which commissioners are authorized to hear, to identify the types of relief which commissioners may recommend, and to identify the types of orders which may be issued by commissioners.

To establish a procedure for judicial review of commissioners' decisions.

Applicability:

This rule shall govern mental health proceedings for involuntary commitment of an individual.

Statement of the Rule:

(1) Types of cases and matters. All applications for involuntary commitment of individuals alleged to be mentally ill, which are filed in the district or Juvenile Court in counties where mental health commissioners are appointed and serving, shall be referred to the commissioner upon filing with the clerk of the court, unless otherwise ordered by the Presiding Judge of the District Court.

(2) Authority of commissioner.

(A) The commissioner shall have the authority to grant relief as set forth in Utah Code ~~Ann.~~ Section ~~62A-12-201~~ 62A-15-601 et seq.

(B) The commissioner shall have the authority to sign orders directing individuals specified as designated examiners by the State Division of Mental Health to conduct examinations of proposed patients to determine whether the individual is mentally ill and should be involuntarily hospitalized.

(C) The commissioner shall have the authority to recommend dismissal of the application based on the report of the examination.

(D) The commissioner shall have the authority to hold an evidentiary hearing and make findings of fact and recommendations to the court regarding the order for involuntary commitment of the proposed patient.

(E) The commissioner's recommendation has the effect of an order of the court until it is modified by the court.

(3) Judicial review. Any person hospitalized or a person's legally designated representative who is aggrieved by the findings, conclusions, and order of the court, has the right to a rehearing upon a petition filed with the court within 30 days of the entry of the court order.

(4) Prohibitions.

(A) Commissioners shall not make final adjudications involuntarily hospitalizing an individual.

(B) Commissioners shall not serve as pro tempore judges in any matter, except as provided by Rule of the Supreme Court.

Rule 9-103. Certification of educational requirements.

Intent:

To establish the process for measuring compliance with the certification requirements under Utah Code ~~Ann.~~ Sections 78-5-127 and ~~78-7-28(2)~~ 78-8-103(2).

Applicability:

This rule shall apply to all Justice Court judges.

Statement of the Rule:

(1) Notification shall be sent to each Justice Court judge of the date and place of the annual training seminar.

(2) Each Justice Court judge shall enter his or her name on a roll to be kept at the annual training seminar.

(3) A Justice Court judge who does not attend the annual training seminar may still be certified for that year if he or she submits verification of attendance at a comparable educational seminar. Training sponsored by national organizations, specialized orientation academies or bar association continuing legal education seminars may qualify for certification. The Board of Justice Court Judges shall review the request of the Justice Court judge for certification and make recommendations to the Council for acceptance of the training equivalent.

(4) The Justice Court Administrator shall forward to the Judicial Conduct Commission the names of Justice Court judges who have been uncertified for two consecutive years.

Rule 11-201. Senior judges.

Intent:

To establish the qualifications, term, authority, appointment and assignment for senior judges and active senior judges.

Applicability:

This rule shall apply to judges of courts of record.

The term "judge" includes justices of the Supreme Court.

Statement of the Rule:

(1) Qualifications.

(A) Senior Judge. To be a senior judge, a judge shall:

(i) have been retained in the last election for which the judge stood for election;

(ii) have voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, shall have recovered from or shall have accommodated that disability;

(iii) demonstrate appropriate ability and character;

(iv) be admitted to the practice of law in Utah, but shall not practice law; and

(v) be eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

(B) Active Senior Judge. To be an active senior judge, a judge shall:

(i) meet the qualifications of a senior judge;

(ii) be physically and mentally able to perform the duties of judicial office;

(iii) maintain familiarity with current statutes, rules and case law;

(iv) satisfy the education requirements of an active judge;

(v) attend the annual judicial conference;

(vi) accept assignments, subject to being called, at least two days per calendar year;

(vii) conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court;

(viii) obtain attorney survey results on the final judicial performance evaluation survey conducted prior to termination of service sufficient to have been certified for retention election by the Judicial Council regardless whether the survey was conducted for self improvement or certification;

(ix) continue to meet the requirements for certification for judicial retention election as those requirements are determined by the Judicial Council to be applicable to active senior judges; and

(x) take and subscribe an oath of office to be maintained by the state court administrator.

(2) Disqualifications. To be an active senior judge, a judge:

(A) shall not have been removed from office or involuntarily retired on grounds other than disability;

(B) shall not have been suspended during the judge's final term of office or final six years in office, whichever is greater;

(C) shall not have resigned from office as a result of negotiations with the Judicial Conduct Commission or while a complaint against the applicant was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause; and

(D) shall not have been subject to any order of discipline for conduct as a senior judge.

(3) Term of Office. A senior judge and active senior judge is appointed for three years unless earlier removed by the Supreme Court with or without cause. Upon application, a senior judge and active senior judge may be reappointed. An active senior judge may not serve beyond age 75.

(4) Authority. A senior judge may solemnize marriages. In addition to the authority of a senior judge, an active senior judge, during an assignment, has all the authority of the office of a judge of the court to which the assignment is made.

(5) Application and Appointment.

(A) To be appointed a senior judge or active senior judge a judge shall apply to the Judicial Council and submit relevant information as requested by the Judicial Council.

(B) The applicant shall:

(i) provide the Judicial Council with the record of all orders of discipline entered by the Supreme Court; and

(ii) declare whether at the time of the application there is any complaint against the applicant pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

(C) The Judicial Council may apply to the judicial performance evaluation information the same standards and discretion provided for in Rule 3-111. After considering all information the Judicial Council may certify to the Supreme Court that the applicant meets the qualifications of a senior judge or active senior judge and the Chief Justice may appoint the judge as a senior judge or active senior judge.

(D) Senior judges and active senior judges holding those offices on the effective date of this rule may continue to serve in that capacity until the expiration of the term of appointment and thereafter shall meet the requirements of this rule. Judges who declined, under Rule 3-111, to participate in an attorney survey in anticipation of retirement may use the results of an earlier survey to satisfy Subsection (1)(B)(viii).

(6) Assignment.

(A) With the consent of the active senior judge, the presiding judge may assign an active senior judge to a case or for a specified period of time. Cumulative assignments under this subsection shall not exceed 60 days per calendar year except as necessary to complete an assigned case.

(B) In extraordinary circumstances and with the consent of the active senior judge, the chief justice may assign an active senior judge to address the extraordinary circumstances for a specified period of time not to exceed 60 days per calendar year, which may be in addition to assignments under subsection (6)(A). To request an assignment under this subsection, the presiding judge shall certify that there is an extraordinary need. The state court administrator shall certify whether there are funds available to support the assignment.

(C) An active senior judge may be assigned to any court other than the Supreme Court.

(D) The state court administrator shall provide such assistance to the presiding judge and chief justice as requested and shall exercise such authority in making assignments as delegated by the presiding judge and chief justice.

(E) Notice of an assignment made under this rule shall be in writing and maintained by the state court administrator.

The Judicial Council Repeals the following rules effective November 1, 2003:

4-102. Law and motion calendar.

4-105. Continuances in special circumstances.

4-107. Consolidation of cases.

4-203. Presentence investigation reports.

4-207. Expungement and sealing of records.

4-501. Motions.

4-503. Request for jury instructions.

4-504. Written orders, judgments and decrees.

4-505. Attorney fee affidavits.

4-505.01. Award of attorney fees in civil default judgments with a principal amount of $5000 or less.

4-506. Withdrawal of counsel in civil cases.

4-507. Disposition of funds on trustee's sale.

4-508. Unpublished opinions.

4-509. Property bonds.

4-601. Victims and witnesses.

4-603. Motions for reduction of offense at sentencing.

4-604. Withdrawal of counsel in criminal and delinquency cases.

4-605. Use of unpublished opinions in criminal cases.

4-607. Presentence investigation reports.

4-608. Trials de novo of justice court proceedings in criminal cases.

6-612. Property bonds.

4-901. Notice requirements for cases pending in district court and juvenile court.

4-902. Certification of district court cases to juvenile court.

4-905. Domestic pretrial conferences and orders.

4-911. Motion and order for payment of costs and fees.

4-912. Child support worksheets.

4-913. Divorce decree upon affidavit.

6-302. Restitution.

6-403. Shortening 90 day waiting period in domestic matters.

6-404. Modification of divorce decrees.

6-406. Opening sealed adoption files.

6-407. Adoptions.

6-501. Attorney's fees.

6-502. Attorney's fees in conservatorships.

Appendix F. Utah State Court Records Retention Schedule

(A) Definitions.

(1) Appellate proceedings. As applicable to the particular case:

(a) expiration of the time in which to file an appeal;

(b) completion of the initial appeal of right;

(c) completion of discretionary appeals; or

(d) completion of trial court proceedings after remittitur.

Appellate proceedings do not include collateral review, such as a petition for post conviction relief or a petition for writ of habeas corpus, although these petitions may themselves be the subject of appellate proceedings.

(2) Case file. The compilation of documents pertaining to a case in the district court and justice court. The compilation of documents pertaining to an individual under the jurisdiction of the juvenile court.

(3) Case history. Includes the docket, judgment docket, registry of judgments, register of actions and other terms used to refer to a summary of the parties and events of a case.

(4) Clerk of the court. Includes all deputy clerks.

(5) Confidential records. Records classified in accordance with the Title 63, Chapter 2, Government Records Access and Management Act and Rule 4-202 *et. seq.* of the Judicial Council as private, controlled, protected, juvenile, sealed, or expunged.

(6) Critical documents. As applicable to the particular case:

(a) Civil. Final amended complaint or petition; final amended answer or response; final amended counterclaims, cross claims, and third party claims and defenses; home study or custody evaluation; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; interlocutory order only if reviewed by an appellate court; orders supplemental to the judgment and writs that have not expired; notice of appeal; transcripts; appellate briefs; final order, judgment or decree or any appellate court; case history.

(b) Child abuse, neglect or dependency. In addition to that which is required of civil cases, shelter hearing order; adjudication orders; disposition orders; reports of the Division of Child and Family Services; psychological evaluations; reports from treatment providers; motion for permanency hearing; response to motion for permanency hearing; petition for termination of parental rights; and response to petition for termination of parental rights.

(c) Divorce and domestic relations. In addition to that which is required of civil cases, petitions to modify or enforce a final order, judgment or decree and the final order entered as a result of that petition.

(d) Felonies, including offenses by a minor in juvenile court. All documents other than duplicates, subpoenas, warrants, orders to show cause, presentence investigation reports and notices of hearings.

(e) Misdemeanors and infractions, including offenses by a minor in juvenile court. Final amended citation or information; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; ~~presentence investigation report,~~ notice of appeal; appellate briefs; final order, judgment or decree or any appellate court; case history.

(f) Probate. In addition to that which is required of civil cases, will admitted to probate; trust instrument; final accounting; reports, findings and orders regarding the mental competence of a person.

(7) Document. Any pleading or other paper filed with or created by the court for a particular case, regardless of medium.

(8) Off-site storage. Storage at the State Records Center under the control of the Division of State Archives.

(9) On-site storage. Storage at the courthouse or any secure storage facility under the control of the court.

(10) Retention period. The time that a record must be kept. The retention period is either permanent or for a designated term of months or years.

(B) Case Records.

(1) Objectives. The objective of the records retention schedule is to maintain convenient access to the documents of the case and to the case history as necessary to the activity in the case. Even in a case in which judgment has been entered there may be substantial activity. In criminal cases, the court can expect affidavits alleging violations of probation and petitions for post conviction relief. In civil cases, the court can expect to issue writs, orders supplemental to the judgment and to conduct other proceedings to collect the judgment. In divorce cases, the court can expect petitions to modify the decree or to enforce visitation and support. This may mean more immediate access in particular cases. The objective of the records retention schedule is to guide the transfer of permanent records to off-site storage and the destruction on non-permanent records.

(2) Storage medium. The decisions of what storage medium to use and when to use it are left to local discretion, needs and resources of the clerk of the court.

With proper training or by the Division of State Archives the clerk of the court may microfilm records. Given the sensitive nature of identifying information contained in court records, such as name, address, telephone number, and social security number of parties, witnesses and jurors, microfilming of court records by Utah Correctional Industries is prohibited. All microfilming shall be in accordance with the standards adopted by the Division. All microfilm developing and quality assurance checks shall be done by the Division. The Division of State Archives shall keep the original film and return a copy to the court.

The clerk of the court may scan documents to a digital image based on local needs and resources. Once scanned to a digital image, the document may be destroyed. Electronic documents may be printed and maintained in the case file.

(3) Storage location. The Administrative Office of the Courts shall maintain all computer records. The clerk of the court shall store on site pending cases, closed cases with significant post judgment activity, and cases with a retention period of less than permanent.

The clerk of the court shall not store case files with significant activity off-site. Records in which there is an order of alimony or child support, visitation or custody shall not be stored off-site until at least three years has expired from the date of the last activity in the case. Within these parameters, the decision to store permanent records on-site or off-site is left to local discretion, needs and resources. The state court records officer and the Division of State Archives may evaluate exceptions for courthouses with critically short storage problems.

Records stored off-site shall be prepared in accordance with standards and instructions of the Division of State Archives. If a record stored off-site is needed at the courthouse, the record will be returned to the court for the duration of the need. The clerk of the court shall not return a record in which there is an order of alimony or child support, visitation or custody to off-site storage until at least three years after the last activity in the case.

(4) Critical documents. At any time after the completion of appellate proceedings, the clerk of the court may remove from the case file and destroy all documents other than critical documents.

(5) The retention period in a criminal case begins as of the completion of the sentence. The level of offense is determined by the offense of which the defendant is convicted or to which the offense is reduced under Section 76-3-402. The retention period in a civil or small claims case begins as of the expiration or satisfaction of the judgment. The retention periods are for the following terms.

(a) Permanent. All case types not governed by a more specific designation; the record of arraignment and conviction required by Rule 9-301; prosecution as a serious youth offender.

(b) 10 years. Third degree felonies; violations of Section 41-6-44.

(c) 5 years. Administrative agency review; civil cases with a judgment of money only; civil and small claims cases dismissed with prejudice; forcible entry and detainer; investigative subpoenas; post conviction relief or habeas corpus other than capital offenses and life without parole; tax liens; worker's compensation.

(d) 3 years. Violations of Section 53-3-231.

(e) 1 year. Extraditions; misdemeanors and infractions classified as "mandatory appearance" by the Uniform Fine and Bail Schedule; petitions to expunge an arrest record in which no charges have been filed.

(f) 6 months. Civil and small claims cases dismissed without prejudice; misdemeanors and infractions classified as "non-mandatory appearance" by the Uniform Fine and Bail Schedule; small claims cases with a judgment of money only.

(6) Retention period in Juvenile Court. The retention period in a delinquency petition or referral begins as of the completion of the sentence. The retention period in other cases begins as of the expiration of the judgment. The retention periods are for the following terms.

(a) Permanent. Adoptions; civil cohabitant abuse; orders terminating parental rights; prosecution as serious youth offender.

(b) Until the youngest subject of the petition reaches age 28. Abuse, neglect and dependency; felonies.

(c) Until the subject of the petition reaches age 18 and jurisdiction of the court is terminated. Misdemeanors and infractions other than non-judicial adjustments.

(d) 10 years. Violations of Section 41-6-44.

(e) 3 years. Violations of Section 53-3-231.

(f) 1 year. Petitions to expunge an arrest record in which no charges have been filed.

(g) 6 months. Non-judicial adjustment of referrals; misdemeanors and infractions classified as "non-mandatory appearance" by the Uniform Fine and Bail Schedule, such as fish and game violations; cases dismissed without prejudice.

(7) Retention period in Supreme Court and Court of Appeals. The retention period for records in the Supreme Court and Court of Appeals is permanent.

(8) Special cases.

(a) The retention period for foreign judgments, abstracts of judgment and transcripts of judgment is the same as for a case of the same type filed originally in Utah.

(b) The retention period for contempt of court is the same as for the underlying case in which the contempt occurred.

(c) The retention period in the juvenile court for records of the prosecution of adults is the same as for the corresponding offense in district or justice court.

(9) Case related records. If the record is filed with the case file, it is treated as a non-critical document unless it is specifically included within the definition of a critical document. If the record is not filed with the case file then its retention period is determined in accordance with the following schedule:

(a) Audio and video tapes and tape logs; court reporter notes. For misdemeanors, infractions and small claims, 3 years from the date the record is created. Otherwise, 9 years from the date the record is created. Tapes shall not be reused.

(b) Court calendars. As determined by the clerk of the court based on local needs.

(c) Confidential records. Confidential records are retained for the same period as the case to which they apply, but they are filed and stored in such a manner as to protect their confidentiality.

(d) Depositions. 6 months after the close of appellate proceedings.

(e) Exhibits. In accordance with Code of Judicial Administration 4-206.

(f) Expunged records. In accordance with Code of Judicial Administration 4-207.

(f) Indexes. Permanent.

(g) Jury lists and juror qualification questionnaires. 4 years from completion of term of availability.

(h) Case history. Permanent.

(10) Record destruction. Court records 50 years of age or older shall be reviewed for historical significance by the Division of State Archives prior to destruction. If a record is of historical significance, the Division will take possession. If a record is not of historical significance, the court shall manage the record in accordance with this schedule.

Paper documents shall be destroyed after expiration of the retention period or after copying the document to microfilm, digital image, or electronic medium. If documents are copied to microfilm, digital image, or electronic medium, the court may maintain the paper documents until such later time that convenient access to the case file can be achieved by means of microfilm or digital image. Each court is responsible for destroying records or making arrangements for destroying records. The court must comply with all laws applicable to the method of destruction. Confidential records must be shredded prior to destruction. Recycling is the preferred method of destruction. In addition, the court may destroy records by incineration or deposit in a landfill. If the court is unable to destroy records by these means, the court may arrange through the state court records officer to have records destroyed by the State Records Center, which may charge a fee.

(C) Administrative Records

(1) Record storage, microfilming, imaging and destruction. Administrative records shall be stored on-site. Administrative records may be microfilmed or scanned to a digital image based on local needs and resources.

(2) Retention period. The retention period for administrative records is in accordance with the following schedule.

(a) Accounting, audit, budget, and finance records. 4 years from the date the record is created.

(b) Final reports approved by the Judicial Council. Permanent.

(c) General counsel legal files. 10 years from date the record is created.

(d) Juror fee and witness fee payment records. 4 years from date of payment.

(e) Meeting minutes. Permanent.

(3) Other Record Retention. All administrative records not specifically listed in this record retention schedule will be retained, transferred or destroyed according to the appropriate court policy and procedure manual or the "Utah State Agency General Retention Schedule."

(D) Effective date

This schedule is effective April 19, 1999, and supersedes all previous retention schedules.

Amended effective June 30, 1999.

Amended effective September 18, 2001.

Amended effective November 1, 2002.

Amended effective November 1, 2003

Code of Judicial Conduct

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Changes effective April 1, 2003.

A. Extra-judicial activities in general. A judge shall conduct the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office;

(3) interfere with the proper performance of judicial duties; or

(4) exploit the judge's judicial position.

~~B. Avocational activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal topics subject to the requirements of this Code.~~

C. Governmental, civic, or charitable activities.

(1) (a) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system,

or the administration of justice, or except when acting pro se in a matter involving the judge or the judge's interests.

(b) A judge shall not use the judge's judicial office or title to influence a legislative or executive body or official for the judge or the judge's interest.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency, which may include a constitutional revision commission, devoted to the improvement of the law, the legal system or the administration of justice, or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will be frequently engaged in adversary proceedings before any court.

(b) A judge, as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(b)(i);

(iv) shall not use or permit the use of the prestige of the judicial office for fund-raising or membership solicitation;

(v) shall not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

(4) As part of the judicial role, ~~A~~a judge is encouraged to ~~should~~ render public service to the community. Judges have a professional responsibility to educate the public about the judicial system and the judicial office, subject to the requirements of this Code.

(i) A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice.

(ii)

(iii) A judge may encourage members of the community to volunteer for court-affiliated programs.

(iv)

(v) A judge may receive public suggestions for the improvement of the law, the legal system, or the legal profession.

(vi)

D. Financial activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position; or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) [Reserved.]

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest those investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and should urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the non- judicial business or profession of a part-time judge or the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge, provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend for a special occasion, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;

(h) [Reserved.]

E. Fiduciary activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as arbitrator or mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

G. Practice of law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Compensation and reimbursement.

(1) A judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person of like education and expertise who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) A judge should not receive compensation for performing a marriage ceremony at the court during regular court hours. A judge may receive compensation for performing a marriage ceremony during non-court hours.

(2) [Reserved.]

I. [Reserved.]

Rules of Professional Conduct

Rule 1.16. Declining or terminating representation.

(a) ~~A~~ Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) ~~The~~ the representation will result in violation of the ~~Rules of Professional Conduct~~ rules of professional conduct or other law;

(2) ~~The~~ the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) ~~The~~ the lawyer is discharged.

(b) ~~A~~ Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client ~~or if:~~ ;

~~(1) The~~(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

~~(2) The~~(3) the client has used the lawyer's services to perpetrate a crime or fraud;

~~(3) A~~(4) the client insists upon ~~pursuing an objective~~ taking action that the lawyer considers repugnant or ~~imprudent;~~ with which the lawyer has a fundamental disagreement;

~~(4) The~~(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

~~(5) The~~(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

~~(6) Other~~(7) other good cause for withdrawal exists.

(c) ~~This Rule is not violated by a lawyer who continues representation when~~ A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer ~~may retain papers relating to the client to the extent permitted by other law, but~~ must provide, upon request, the client's file to the client. The lawyer may reproduce and retain copies of the client file at the lawyer's expense.

Comment

1 A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment 4.

Mandatory Withdrawal

2 A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the ~~R~~rules of ~~P~~professional Cconduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

3 When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may ~~wish~~ request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

4 A client has ~~the~~ a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

5 Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring ~~the client to represent himself.~~ self-representation by the client.

6 If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

7 A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also ~~may~~ withdraw where the client insists on ~~a repugnant or imprudent objective~~ taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

8 A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client ~~Upon~~ upon Withdrawal

9 Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. ~~The lawyer may retain papers as security for a fee only to the extent permitted by law.~~ See Rule 1.15. ~~Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.~~ Upon termination of representation, a lawyer shall provide, upon request, the client's file to the client notwithstanding any other law, including attorney lien laws. It is impossible to set forth one all-encompassing definition of what constitutes the client file. However, the client file generally would include the following: all papers and property the client provides to the lawyer; litigation materials such as pleadings, motions, discovery, and legal memoranda; all correspondence; depositions; expert opinions; business records; exhibits or potential evidence; and witness statements. The client file generally would not include the following: the lawyer's work product such as recorded mental impressions; research notes; legal

theories; internal memoranda; and unfiled pleadings. ~~The lawyer may retain items such as depositions, experts' reports and other items for which the attorney has paid costs or is obligated to pays costs and for which the client has not reimbursed the attorney.~~ The Utah rule differs from the ABA Model Rule in requiring that papers and property considered to be part of the client's file be returned to the client notwithstanding any other laws or fees or expenses owing to the lawyer.

Rules of Appellate Procedure

Rule 6. Bond for costs on appeal.

Except in a criminal case, at the time of filing the notice of appeal, the appellant shall file with the notice a bond for costs on appeal, unless the bond is waived in writing by the adverse party, or unless an affidavit as provided for in Utah Code Section ~~21-7-3, Utah Code Ann. 1953 as amended,~~ 78-7-36 is filed. The bond shall be in the sum of at least $300.00 or such greater amount as the trial court may order on motion of the appellee to ensure payment of costs on appeal. No separate bond for costs on appeal is required when a supersedeas bond is filed. The bond on appeal shall be with sufficient sureties and shall be conditioned to secure payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. The adverse party may except to the sufficiency of the sureties in accordance with the provisions of Rule 62~~(i)~~, Utah Rules of Civil Procedure.

Rule 12. Transmission of the record.

(a) Duty of reporter to prepare and file transcript; request for enlargement of time; notice to appellate court.

(a)(1) Upon receipt of a request for a transcript, the court executive shall file with the clerk of the appellate court an acknowledgment that the request has been received and the date of its receipt. The court executive shall assign the preparation of the transcript to an official court reporter or, if recorded on video or audio equipment, to an official court transcriber in accordance with CJA 3-305. By stipulation of the parties approved by the appellate court, a person other than an official court transcriber may transcribe a recorded hearing. The transcript shall be completed and filed within 30 days of the assignment.

(a)(2) The reporter may request from the clerk of the appellate court an enlargement of time in which to file the transcript. The request for enlargement of time shall be in writing and shall contain the elements stated in CJA 5-201(1). If filed prior to the expiration of the transcript preparation period, the request shall make a showing of good cause. If filed after the expiration of the period, the request shall make a showing of extraordinary circumstances beyond the control of the reporter. The reporter shall provide a copy of the request to the parties. The clerk of the appellate court shall provide written notice of the disposition of the request for enlargement of time to the court reporter, the parties, and the court executive. If the reporter fails to file the transcript within the original or extended period of time, the clerk of the appellate court shall notify the court executive.

(a)(3) Upon completion of the transcript, the reporter shall file it with the clerk of the trial court and notify the clerk of the appellate court that the transcript has been filed. At the request of the person ordering the transcript or at the request of the appellate court, the court reporter shall file the transcript in a compressed format that places multiple complete pages of the original transcript upon each page of compressed transcript. The compressed transcript shall retain the page and line numbers of the original transcript. A compressed transcript may be certified as a correct copy of the original.

(b) Transmittal of record on appeal to appellate court; duty of trial court clerk or agency clerk.

(b)(1) Duty of trial court clerk in criminal cases. In criminal cases, the record will be transmitted by the clerk of the trial court to the clerk of the appellate court upon completion of the transcript under paragraph (a) above or, if there is no transcript, within 20 days of the filing of the notice of appeal. In cases where a party or a party's counsel notifies the court clerk in writing that the presentence investigation report is relevant to an issue on appeal, the clerk shall include the sealed presentence investigation report as part of the record.

(b)(2) Duty of trial court clerk in civil cases. In civil cases, unless otherwise ordered by the appellate court, the record shall remain in the custody of the trial court clerk during the preparation and filing of briefs.

(b)(2)(A) Transmit index. When the transcript is completed pursuant to paragraph (a) above, the clerk of the trial court shall immediately transmit a certified copy of the index prepared pursuant to Rule 11(b) to the clerk of the appellate court. If there is no transcript requested, the clerk of the trial court shall transmit the index of the record to the clerk of the appellate court within 20 days, but not sooner than 14 days, after the filing of the notice of appeal.

(b)(2)(B) Transmit record. Within 10 days from the date of notice from the clerk of the appellate court that briefing is complete the clerk of the trial court shall transmit the papers, transcript and exhibits in the appeal to the appellate court.

(b)(3) Duty of court clerk in juvenile court cases. In juvenile court cases, the record will be transmitted by the juvenile court clerk to the clerk of the appellate court upon completion of the transcript under paragraph (a) above or, if there is no transcript, within 20 days of the filing of the notice of appeal.

(b)(4) Duty of clerk in agency cases. In agency cases, unless otherwise ordered by the appellate court, the record shall remain in the custody of the agency during the preparation and filing of briefs.

(b)(4)(A) Transmit index. When the transcript is completed pursuant to paragraph (a) above, the clerk shall immediately transmit a certified copy of the index prepared pursuant to Rule 11(b) to the clerk of the appellate court. If there is no transcript requested, the clerk shall transmit the

index of the record to the clerk of the appellate court within 20 days, but not sooner than 14 days, after the filing of the petition for review.

(b)(4)(B) Transmit record. Within 10 days from the date of notice from the clerk of the appellate court that briefing is complete, the clerk shall transmit the papers, transcript and exhibits in the appeal to the appellate court.

(b)(5) Transmission of exhibits. Documents of unusual bulk or weight, and physical exhibits other than documents shall not be transmitted by the clerk of the trial court unless directed to do so by a party or by the clerk of the appellate court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Retention of the record in the trial court. If the record or any part of it is required in the trial court beyond the time set forth in paragraph (b) of this rule, the trial court on its own motion or after motion of a party may order the clerk of the trial court to retain the record or parts thereof subject to the request of the appellate court. The clerk of the trial court shall transmit a copy of the order and of the index and the portion of the record not retained by the trial court to the clerk of the appellate court.

(d) Record for preliminary hearing in appellate court. If prior to the time the record is transmitted the record is required in the appellate court, the clerk of the trial court at the request of any party or of the appellate court shall transmit to the appellate court such parts of the original record as designated.

Rule 30. Decision of the court: dismissal; notice of decision.

(a) Decision in civil cases. The court may reverse, affirm, modify, or otherwise dispose of any order or judgment appealed from. If the findings of fact in a case are incomplete, the court may order the trial court or agency to supplement, modify, or complete the findings to make them conform to the issues presented and the facts as found from the evidence and may direct the trial court or agency to enter judgment in accordance with the findings as revised. The court may also order a new trial or further proceedings to be conducted. If a new trial is granted, the court may pass upon and determine all questions of law involved in the case presented upon the appeal and necessary to the final determination of the case.

(b) Decision in criminal cases. If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the court. If a judgment of conviction or other order is affirmed or modified, the judgment or order affirmed or modified shall be executed.

(c) Decision and opinion in writing; entry of decision. When a judgment, decree, or order is reversed, modified, or the reasons shall be stated concisely in writing and filed with the clerk. Any justice or judge concurring or dissenting may likewise give reasons in writing and file the same with the clerk. The entry by the clerk in the records of the court shall constitute the entry of the judgment of the court.

(d) Decision without opinion. If, after oral argument, the court concludes that a case satisfies the criteria set forth in Rule 31(b), it may dispose of the case by order without written opinion. The decision shall have only such effect as precedent as is provided for by Rule 31(f).

(e) Notice of decision. Immediately upon the entry of the decision, the clerk shall give notice to the respective parties and make the decision public in accordance with the direction of the court.

(f) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals may be cited as precedent in all courts of the State. Unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.

Rules of Civil Procedure

Rule 3. Commencement of action.

(a) How commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof~~; provided, however, that the foregoing provision shall not change the requirement of Utah Code Ann. Section 12-1-8 (1986)~~. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day ~~which~~ that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time provided under subsection (e), is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action ~~which~~ that has been pending before it.

(d) For motions - Affidavits. A written motion, other than one ~~which~~ that may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules~~, by CJA 4-501~~, or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day ~~which~~ that is not a Saturday, Sunday, or a legal holiday.

Rule 7. Pleadings allowed; ~~form of~~ motions, memoranda, hearings, orders, objection to commissioner's order.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim ~~denominated as such~~; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

~~(b) Motions, orders and other papers.~~

~~(1) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.~~

~~(2) Orders. An order includes every direction of the court including a minute order made and entered in writing and not included in a judgment. An order for the payment of money may be enforced by execution in the same manner as if it were a judgment. Except as otherwise specifically provided by these rules, any order made without notice to the adverse party may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice.~~

~~(3) Hearings on motions or orders to show cause. When on the day fixed for the hearing of a motion or an order to show cause, the judge before whom such motion or order is to be heard is unable to hear the parties, the matter shall stand continued until the further order of the court, or it may be transferred by the court or judge to some other judge of the court for such hearing.~~

~~(4) Application of rules to motions, orders, and other papers. The rules applicable to captions, signings, and other matters of form of pleadings apply to all motions, orders, and other papers provided for by these rules.~~

~~(c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.~~

(b) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

(c) Memoranda.

(c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) Length. Memoranda shall not exceed the following pages of argument without leave of the court:

(c)(2)(A) initial memorandum supporting or opposing a motion other than a motion for summary judgment: 10 pages;

(c)(2)(B) initial memorandum supporting or opposing a motion for summary judgment: 25 pages;

(c)(2)(C) reply to memorandum opposing a motion other than a motion for summary judgment: 5 pages; and

(c)(2)(D) reply to memorandum opposing a motion for summary judgment: 10 pages.

The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) Content.

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.[1]

(e) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing shall

[1] Advisory Committee Note. The practice for courtesy copies varies by judge and so is not regulated by rule. Each party should ascertain whether the judge wants a courtesy copy of that party's motion, memoranda and supporting documents and, if so, when and where to deliver them.

be separately identified in the caption of the document containing the request. The court shall grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, file a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service.

(g) Objection to court commissioner's order. A recommended order of a court commissioner is the order of the court until modified by the court. A party may object to the recommended order of a court commissioner by filing an objection in the same manner as filing a motion within ten days after the recommended order is entered. A party may respond to the objection in the same manner as responding to a motion.

Rule 9. Pleading special matters.

(a)(1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. ~~When a~~ A party ~~desires to~~ may raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity~~, he shall do so~~ by specific negative averment, which shall include ~~such supporting particulars as are peculiarly~~ facts within the pleader's knowledge~~, and on such~~. If raised as an issue, the party relying on such capacity, authority, or legal existence, shall establish the same on the trial.

(a)(2) Designation of unknown defendant. When a party does not know the name of an adverse party, he may state that fact in the pleadings, and thereupon such adverse party may be designated in any pleading or proceeding by any name; provided, that when the true name of such adverse party is ascertained, the pleading or proceeding must be amended accordingly.

(a)(3) Actions to quiet title; description of interest of unknown parties. In an action to quiet title wherein any of the parties are designated in the caption as "unknown," the pleadings may describe such unknown persons as "all other persons unknown, claiming any right, title, estate or

interest in, or lien upon the real property described in the pleading adverse to the complainant's ownership, or clouding his title thereto."

(b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

(d) Official document or act. In pleading an official document or act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

(f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage. When items of special damage are claimed, they shall be specifically stated.

(h) Statute of limitations. In pleading the statute of limitations it is not necessary to state the facts showing the defense but it may be alleged generally that the cause of action is barred by the provisions of the statute relied on, referring to or describing such statute specifically and definitely by section number, subsection designation, if any, or otherwise designating the provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the party pleading the statute must establish, on the trial, the facts showing that the cause of action is so barred.

(i) Private statutes; ordinances. In pleading a private statute of this state, or an ordinance of any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient to refer to such statute or ordinance by its title and the day of its passage or by its section number or other designation in any official publication of the statutes or ordinances. The court shall thereupon take judicial notice thereof.

(j) Libel and slander.

(j)(1) Pleading defamatory matter. It is not necessary in an action for libel or slander to set forth any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which the action arose; but it is sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory matter must establish, on the trial, that it was so published or spoken.

(j)(2) Pleading defense. In his answer to an action for libel or slander, the defendant may allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages, and, whether he proves the justification or not, he may give in evidence the mitigating circumstances.

(k) Renew judgment. A complaint alleging failure to pay a judgment shall describe the judgment with particularity or attach a copy of the judgment to the complaint.

Rule 24. Intervention.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motions shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Constitutionality of statutes and ordinances.

(d)(1) If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact. The court shall permit the state to intervene upon timely application.

(d)(2) If a party challenges the constitutionality of a county or municipal ordinance in an action in which the county or municipal attorney has not appeared, the party raising the question of constitutionality shall notify the county or municipal attorney of such fact. The court shall permit the county or municipality to intervene upon timely application.

(d)(3) Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted.

Rule 42. Consolidation; separate trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(a)(1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(a)(2) If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 51. Instructions to jury; objections.

(a) Preliminary instructions. After the jury is sworn and before opening statements, the court may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the elements and burden of proof for the cause of action, and the definition of terms. The court may instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and any matter the court in its discretion believes will assist the jurors in comprehending the case. Preliminary instructions shall be in writing and a copy provided to each juror. At the final pretrial conference or at such other time as the court directs, a party may file a written request that the court instruct the jury on the law as set forth in the request. The court shall inform the parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish the parties with a copy of its proposed instructions, unless the parties waive this requirement.

(b) Interim written instructions. During the course of the trial, the court may instruct the jury on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the written instruction, the court shall advise the parties of its intent to do so and of the content of the instruction. A party may request an interim written instruction.

(c) Final instructions. ~~At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in said requests.~~ Parties shall file requested jury instructions at the time and in the format directed by the court. If a party relies on statute, rule or case law to support or object to a requested instruction, the party shall provide a citation to or a copy of the precedent. The court shall inform counsel of its proposed action upon the requests prior to instructing the jury; and it shall furnish counsel with a copy of its proposed instructions, unless the parties waive this requirement. Final instructions shall be in writing and at least one copy provided to the jury. The court shall provide a copy to any juror who requests one and may, in its discretion, provide a copy to all jurors.

(d) Objections to instructions. Objections to written instructions shall be made before the instructions are given to the jury. Objections to oral instructions may be made after they are given to the jury, but before the jury retires to consider its verdict. The court shall provide an opportunity to make objections outside the hearing of the jury. Unless a party objects to an instruction or the failure to give an instruction, the instruction may not be assigned as error except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall identify the matter to which the objection is made and the grounds for the objection.

(e) Arguments. Arguments for the respective parties shall be made after the court has given the jury its final instructions. The court shall not comment on the evidence in the case, and if the court states any of the evidence, it must instruct the jurors that they are the exclusive judges of all questions of fact.

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings. Judgments shall state whether they are entered upon trial, stipulation, motion or the court's initiative; and, unless otherwise directed by the court, a judgment shall not include any matter by reference.

(b) Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, ~~which~~ that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment.

(c)(1) Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

(c)(2) Judgment by default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(d) Costs.

(d)(1) To whom awarded. Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court ~~in which the judgment was rendered~~.

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

~~(3) [Deleted.]~~

~~(4) [Deleted.]~~

(e) Interest and costs to be included in the judgment. The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the register of actions and in the judgment docket.

Rule 72. Property bonds.

(a) A real property bond posted with the court shall:

(a)(1) be signed by all owners of record;

(a)(2) contain the complete legal description of the property and the property tax identification number;

(a)(3) be acknowledged before a notary public;

(a)(4) be accompanied by a copy of the document vesting title in the owners;

(a)(5) be accompanied by a copy of the property tax statement for the current or previous year;

(a)(6) be accompanied by a current title report, a current foreclosure report, or such other information as required by the court; and

(a)(7) be accompanied by a written statement from each lien holder stating:

(a)(7)(A) the current balance of the lien;

(a)(7)(B) the date the most recent payment was made;

(a)(7)(C) that the debt is not in default; and

(a)(7)(D) that the lien holder will notify the court if a default occurs or if a foreclosure process is commenced during the period the property bond is in effect.

(b) The bond is not effective until recorded with the county recorder of the county in which the property is located. Proof of recording shall be filed with the court.

(c) Upon exoneration of the bond, the property owner shall present a release of property bond to the court for approval.

Rule 73. Attorney fees.

(a) When attorney fees are authorized by contract or by law, a request for attorney fees shall be supported by affidavit or testimony unless the party claims attorney fees in accordance with the schedule in subsection (d) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

(b) An affidavit supporting a request for or augmentation of attorney fees shall set forth:

(b)(1) the basis for the award;

(b)(2) a reasonably detailed description of the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work;

(b)(3) factors showing the reasonableness of the fees;

(b)(4) the amount of attorney fees previously awarded; and

(b)(5) if the affidavit is in support of attorney fees for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney is not sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

(c) No affidavit is required if a party requests attorney fees in accordance with the schedule in subsection (d).[2] In such cases the party's complaint shall state the basis for attorney fees, state the amount of attorney fees allowed by the schedule, and cite the law or attach a copy of the contract authorizing the award.

(d) Attorney fees awarded under the schedule may be augmented only for considerable additional efforts in collecting or defending the judgment and only after further order of the court.[3]

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest,

Between	and:	Attorney Fees Allowed
0.00	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

Rule 74. Withdrawal of counsel.

(a) If a motion is not pending and a certificate of readiness for trial has not been filed, an attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending and no certificate of readiness for trial has been filed. If a

[2] Advisory Committee Note. The schedule does not limit the amount of a reasonable attorney fee if an affidavit is submitted.

[3] Advisory Committee Note. The schedule of attorney fees includes amounts for routine orders supplemental to the judgment and routine collection writs. For attorney fees for collection efforts beyond such routine steps, the lawyer should apply to the court under subsections (a) and (b).

motion is pending or a certificate of readiness for trial has been filed, an attorney may not withdraw except upon motion and order of the court.

(b) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 20 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

(c) Substitution of counsel. An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.

Rule 100. Coordination of cases pending in district court and juvenile court.

(a) Notice to the court. In a case in which child custody, child support or parent time is an issue, all parties have a continuing duty to notify the court:

(a)(1) of a case in which a party or the party's child is a party to or the subject of a petition or order involving child custody, child support or parent time;

(a)(2) of a criminal or delinquency case in which a party or the party's child is a defendant or respondent;

(a)(3) of a protective order case involving a party regardless whether a child of the party is involved.

The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

(b) Communication among judges and commissioners. The judge or commissioner assigned to a case in which child custody, child support or parent time is an issue shall communicate and consult with any other judge or commissioner assigned to any other pending case involving the same issues and the same parties or their children. The objective of the communication is to consider the feasibility of consolidating the cases before one judge or commissioner or of coordinating hearings and orders.

(c) Participation of parties. The judges and commissioners may allow the parties to participate in the communication. If the parties have not participated in the communication, the parties shall be given notice and the opportunity to present facts and arguments before a decision to consolidate the cases.

(d) Consolidation of cases.

(d)(1) The court may consolidate cases within a county under Rule 42.

(d)(2) The court may transfer a case to the court of another county with venue or to the court of any county in accordance with Utah Code Section 78-13-9.

(d)(3) If the district court and juvenile court have concurrent jurisdiction over cases, either court may transfer a case to the other court upon the agreement of the judges or commissioners assigned to the cases.

(e) Judicial reassignment. A judge of may hear and determine a case in another court or district upon assignment in accordance with CJA Rule 3-108(3).

Rule 101. Domestic pretrial conferences and orders.

(a) In the judicial districts with a court commissioner, a court commissioner shall conduct the pretrial conference in all contested matters seeking divorce, annulment, paternity or modification of a decree of divorce.

(b) At the pretrial conference, the commissioner shall discuss the issues with counsel and the parties, may receive proffers of evidence, and may receive evidence if authorized to do so by the presiding judge of the district. The commissioner may designate one of the parties' counsel to prepare a written order in accordance with Rule 7. Issues not resolved at the pretrial conference shall be set for trial.

(c) Following the pretrial conference, the commissioner shall issue a pretrial order which shall include:

(c)(1) the issues stipulated to by the parties;

(c)(2) the disputed issues; and

(c)(3) the commissioner's recommendations as to the disputed issues if the commissioner conducted an evidentiary hearing on those issues.

Rule 102. Motion and order for payment of costs and fees.

(a) In an action under Utah Code Section 30-3-3(1), either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert witness fees, to enable the moving party to prosecute or defend the action. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

(a)(1) prior to the commencement of the action;

(a)(2) during the action; or

(a)(3) after entry of judgment for the costs of enforcement of the judgment.

(b) The court may grant the motion if the court finds that:

(b)(1) the moving party lacks the financial resources to pay the costs and fees;

(b)(2) the non-moving party has the financial resources to pay the costs and fees;

(b)(3) the costs and fees are necessary for the proper prosecution or defense of the action; and

(b)(4) the amount of the costs and fees are reasonable.

(c) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (b) is missing or enters in the record the reason for denial of the motion.

(d) The order shall specify the costs and fees to be paid within 30 days of entry of the order or the court shall enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order shall specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

Rule 103. Child support worksheets.

(a) When filing a child support worksheet required by Utah Code Section 78-45-7.3, a party shall:

(a)(1) file the worksheet in duplicate and the clerk of court shall send one copy to the Administrative Office of the Courts; or

(a)(2) file one worksheet with the court, send the information on the worksheet electronically to the Administrative Office and so indicate on the worksheet.

(b) The court shall not enter the final decree of divorce, final order of modification, or final decree of paternity until the completed worksheet is filed.

Rule 104. Divorce decree upon affidavit.

A party in a divorce case may apply for entry of a decree without a hearing in cases in which the opposing party fails to make a timely appearance after service of process or other appropriate

notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the decree shall accompany the application. The affidavit shall contain evidence sufficient to support necessary findings of fact and a final judgment.

Rule 105. Shortening 90-day waiting period in domestic matters.

A motion for a hearing less than 90 days from the date the petition was filed shall be accompanied by an affidavit setting forth the date on which the petition for divorce was filed and the facts constituting good cause.

Rule 106. Modification of divorce decrees.

Proceedings to modify a divorce decree shall be commenced by filing a petition to modify in the original divorce action. Service of the petition and summons upon the opposing party shall be in accordance with Rule 4. No request to modify a decree shall be raised by an order to show cause. The responding party shall serve the answer within twenty days after service of the petition.

Rule 107. Decree of adoption; Petition to open adoption records.

(a) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.

(b) A petition to open the court's adoption records shall identify the type of information sought and shall state good cause for access, and, in the following circumstances, shall provide the information indicated below:

(b)(1) If the petition seeks health, genetic or social information, the petition shall state why the health history, genetic history or social history of the Bureau of Vital Statistics is insufficient for the purpose.

(b)(2) If the petition seeks identifying information, the petition shall state why the voluntary adoption registry of the Bureau of Vital Statistics is insufficient for the purpose.

(c) The court may order the petition served on any person having an interest in the petition, including the placement agency, the attorney handling a private placement, or the birth parents. If the court orders the petition served on any person whose identity is confidential, the court shall proceed in a manner that gives that person notice and the opportunity to be heard without revealing that person's identity or location.

(d) The court shall determine whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure.

(e) If the court grants the petition, the court shall permit the petitioner to inspect and copy only those records that serve the purpose of the petition. The order shall expressly permit the petitioner to inspect and copy such records.

(f) The clerk of the court shall reseal the records after the petitioner has inspected and copied them.

Rules of Criminal Procedure

Rule 12. Motions.

(a) Motions. An application to the court for an order shall be by motion~~. A motion other than one~~, which, unless made during a trial or hearing, shall be in writing ~~unless the court otherwise permits~~ and in accordance with this rule. ~~It~~ A motion shall state succinctly and with particularity the grounds upon which it is made and ~~shall set forth~~ the relief sought. ~~It may be supported by affidavit or by evidence.~~ A motion need not be accompanied by a memorandum unless required by the court.

(b) Request to Submit for Decision. When the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. The request shall be a separate pleading captioned "Request to Submit for Decision." The Request to Submit for Decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If no party files a request, the motion will not be submitted for decision.

~~(b)~~(c) Time for filing specified motions. Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion.

(c)(1) The following shall be raised at least five days prior to the trial:

~~(1)~~ (c)(1)(A) defenses and objections based on defects in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense, which objection shall be noticed by the court at any time during the pendency of the proceeding;

~~(2)~~ (c)(1)(B) motions to suppress evidence;

~~(3)~~ (c)(1)(C) requests for discovery where allowed;

~~(4)~~ (c)(1)(D) requests for severance of charges or defendants; or

~~(5)~~ (c)(1)(E) motions to dismiss on the ground of double jeopardy.

(c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah Code Section 76-3-402, shall be in writing and filed at least ten days prior to the date of sentencing unless the court sets the date for sentencing within ten days of the entry of conviction.

~~(c)~~(d) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.

~~(d)~~(e) Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.

~~(e)~~(f) Except in justices' courts, a verbatim record shall be made of all proceedings at the hearing on motions, including such findings of fact and conclusions of law as are made orally.

~~(f)~~(g) If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that bail be continued for a reasonable and specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect provisions of law relating to a statute of limitations.

Rule 21. Verdict.

(a)(1) For crimes committed on or after May 6, 2002, the verdict of the jury shall be either "guilty" or "not guilty," "not guilty by reason of insanity," "guilty and mentally ill at the time of the offense," or "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill at the time of the offense" provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that he was insane at the time of the commission of the offense charged, the verdict shall be "not guilty by reason of insanity."

(a)(2) For crimes committed before May 6, 2002, the defendant may elect to proceed under subsection (a)(1) or under (a)(3).

(a)(3) For crimes committed before May 6, 2002, unless the defendant elects to proceed under subsection (a)(1), the verdict of the jury shall be either “guilty” or “not guilty,” “not guilty by reason of insanity,” “guilty and mentally ill,” or “not guilty of the crime charged but guilty of a lesser included offense,” or “not guilty of the crime charged but guilty of a lesser included offense and mentally ill” provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that he was insane at the time of the commission of the offense charged, the verdict shall be “not guilty by reason of insanity.”

(b) The verdict shall be unanimous. It shall be returned by the jury to the judge in open court and in the presence of the defendant and counsel. If the defendant voluntarily absents himself, the verdict may be received in his absence.

(c) If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to any defendant as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(d) When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted shall be stated separately in the verdict.

(e) The jury may return a verdict of guilty to the offense charged or to any offense necessarily included in the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(f) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or may be polled at the court's own instance. If, upon the poll, there is no unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged. If the verdict is unanimous, it shall be recorded.

(g) If judgment of acquittal is given on a verdict or the case is dismissed and the defendant is not detained for any other legal cause, he shall be discharged as soon as the judgment is given. If a verdict of guilty is returned, the court may order the defendant to be taken into custody to await judgment on the verdict or may permit the defendant to remain on bail.

Rule 21.5. Presentence investigation reports; Restitution.

(a) Presentence investigation reports shall be completed by order of the court as provided in Utah Code Sections 77-18-1 and 64-13-20. Presentence reports shall either be physically removed from the case file and kept in a separate storage area or retained in the case file in a sealed envelope marked "Controlled."

(b) Full disclosure of the presentence investigation report shall be made to the prosecutor, defense counsel, or the defendant if the defendant is not represented by counsel, unless disclosure of the presentence report would jeopardize the life or safety of third parties. At least three working days in advance of the scheduled sentencing date, the Department shall provide a copy of the presentence investigation report to the court, and to the defendant's counsel or the defendant if not represented by counsel, and the prosecutor. The presentence report shall also be made available to prosecutors, defense counsel and the defendant at the court on the date of sentencing. In cases where a party or a party's counsel notifies the court clerk, in writing, that the presentence investigation report is the subject of an appeal, the clerk shall include the sealed presentence investigation report as part of the record.

(c) Restitution.

(c)(1) The presentence investigation report prepared by the Department of Corrections shall include a specific statement of pecuniary damages as provided in Utah Code Section 77-18-1(4).

This statement shall include, but not be limited to, a specific dollar amount recommended by the Department of Corrections to be paid by the defendant to the victim(s).

(c)(2) In cases where a specific dollar value is not known, and is not an accumulating amount, e.g. continuing medical expenses, the court may continue the sentencing. If sentencing occurs, it shall be done with the concurrence of defense counsel/defendant and the prosecutor and an agreement shall be reached as to how restitution shall be determined. In no instance shall the restitution amount be determined by the Department of Corrections without approval of the court, defendant, defense counsel and the prosecutor. If the parties disagree about the restitution amount, a restitution hearing shall be scheduled.

Rule 26. Written orders, judgments and decrees.

(a) In all rulings by a court, counsel for the party or parties obtaining the ruling shall within fifteen days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.

(b) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five days after service.

(c) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered based on a ruling after a hearing or argument, the stipulation of counsel, the motion of counsel or upon the court's own initiative, and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made. If the order, judgment, or decree is the result of a hearing, the order shall include the date of the hearing, the nature of the hearing, and the names of the attorneys and parties present at the hearing.

(d) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.

(e) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record .

Rule 34. Consolidation of cases.

(a) A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(b) If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

Rule 35. Victims and witnesses.

(a) The prosecuting agency shall inform all victims and subpoenaed witnesses of their responsibilities during the criminal proceedings.

(b) The prosecuting agency shall inform all victims and subpoenaed witnesses of their right to be free from threats, intimidation and harm by anyone seeking to induce the victim or witness to testify falsely, withhold testimony or information, avoid legal process, or secure the dismissal of or prevent the filing of a criminal complaint, indictment or information.

(c) If requested by the victim, the prosecuting agency shall provide notice to all victims of the date and time of scheduled hearings, trial and sentencing and of their right to be present during those proceedings and any other public hearing unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.

(d) The informational rights of victims and witnesses contained in paragraphs (a) through (c) of this rule are contingent upon their providing the prosecuting agency and court with their current telephone numbers and addresses.

(e) In cases where the victim or the victim's legal guardian so requests, the prosecutor shall explain to the victim that a plea agreement involves the dismissal or reduction of charges in exchange for a plea of guilty and identify the possible penalties which may be imposed by the court upon acceptance of the plea agreement. At the time of entry of the plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been contacted and an explanation of the plea bargain has been provided to the victim or the victim's legal guardian prior to the court's acceptance of the plea. If the victim or the victim's legal guardian has informed the prosecutor that he or she wishes to address the court at the change of plea or sentencing hearing, the prosecutor shall so inform the court.

(f) The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.

(g) Judges should give scheduling priority to those criminal cases where the victim is a minor in an effort to minimize the emotional trauma to the victim. Scheduling priorities for cases involving minor victims are subject to the scheduling priorities for criminal cases where the defendant is in custody.

Rule 36. Withdrawal of counsel.

(a) Withdrawal of counsel prior to entry of judgment.

(a)(1) Consistent with the Rules of Professional Conduct, an attorney may not withdraw as counsel of record in criminal cases without the approval of the court.

(a)(2) A motion to withdraw as an attorney in a criminal case shall be made in open court with the defendant present unless otherwise ordered by the court.

(b) Withdrawal of counsel after entry of judgment. Prior to permitting withdrawal of trial counsel, the trial court shall require counsel to file a written statement certifying:

(b)(1) That the defendant has been advised of the right to file a motion for new trial or to seek a certificate of probable cause, and if in counsel's opinion such action is appropriate, that the same has been filed.

(b)(2) That the defendant has been advised of the right to appeal and if in counsel's opinion such action is appropriate, that a Notice of Appeal, a Request for Transcript, and in appropriate cases, an Affidavit of Impecuniosity and an Order requiring the appropriate county to bear the costs of preparing the transcript have been filed.

Rule 37. Citation to decisions.

Published decisions of the Supreme Court and the Court of Appeals may be cited as precedent in all criminal proceedings. Unpublished decisions may also be cited as precedent, so long as all parties and the court are supplied with accurate copies at the time the decision is first cited.

Rule 38. Trials de novo of justice court proceedings.

(a) Right to appeal. Appeal of a judgment or order of the justice court is as provided in Utah Code Section 78-5-120.

(b) Venue. The appeal shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. Either party may move for a change of venue under the applicable Rules of Criminal Procedure.

(c) The notice of appeal. The notice of appeal must be filed within thirty days of the entry of judgment or order. Within twenty days after receipt of the notice of appeal, the justice court shall transmit to the district court a certified copy of the docket, the information or waiver of information, the judgment and sentence and other orders and papers filed in the case.

(d) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.

(e) Orders. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo or hearing de novo, except that the justice court shall determine the application for a certificate of probable cause.

(f) Proceedings and order of the district court. The district court shall conduct anew the proceedings on which the judgment or order appealed from are based. Unless the case is remanded, the disposition of fine revenue shall be according to district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case.

(g) Remand. The district court may dismiss the appeal and remand the case to the justice court if the appellant:

(g)(1) fails to appear,

(g)(2) fails to take steps necessary to prosecute the appeal, or

(g)(3) requests the appeal be dismissed.

Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court as required by Utah Code Section 78-5-120.

(h) Traffic convictions. Notwithstanding the filing of a notice of appeal, if a person is convicted of a traffic offense in justice court, the justice court shall require the person to surrender all of his or her license certificates and the justice court shall forward them with the record of conviction to the Driver License Division within ten days as provided in Utah Code Section 53-3-218.

Rule 39. Coordination of cases pending in district court and juvenile court

(a) All parties have a continuing duty to notify the court of a delinquency case pending in juvenile court in which the defendant is a party.

(b) The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other pending case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

Rules of Juvenile Procedure

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.

(a) The issuance and execution of a warrant in delinquency cases is governed by Title 77, Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

(b) After a petition is filed, a warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court or in the petition that there is probable cause to believe that:

(b)(1) the minor has committed an act which would be a felony if committed by an adult;

(b)(2) the minor has failed to appear after the minor or the parent, guardian or custodian has been legally served with a summons;

(b)(3) there is a substantial likelihood the minor will not respond to a summons;

(b) (4) the summons cannot be served and the minor's present whereabouts are unknown;

(b) (5) the minor seriously endangers others and immediate removal appears to be necessary for the protection of others or the public; or

(b) (6) there are reasonable grounds to believe that the minor has run away or escaped from the minor's parent, guardian or custodian.

(c) A warrant for immediate custody of a minor may be issued if the court finds from the affidavit that the minor is under the continuing jurisdiction of the court and probable cause to believe that the minor:

(c)(1) has left the custody of the person or agency vested by the court with legal custody and guardianship without permission; or

(c) (2) has violated a court order.

(d) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(d)(1) an order that the minor be taken to the detention or shelter facility designated by the court at the address specified pending a hearing or further order of the court;

(d) (2) the name, date of birth and last known address of the minor;

(d) (3) the reasons why the minor is being taken into custody;

(d) (4) a time limitation on the execution of the warrant;

(d) (5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(d) (6) the date, county and court location where the warrant is being issued.

(d) (7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

(e) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(f) A peace officer who brings a minor to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(g) This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody.

(h) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Utah Code Ann. 78-3a-106~~, Section 78-3a-112,~~ and Section 78-3a-113.~~ and Section 62A-4a-202.1~~

~~(i) A warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court that there is probable cause to believe that:~~

~~(1) A child is being ill-treated by his parent, guardian, or custodian, or is being detained, ill-treated, or harbored against the desires of his parent, guardian, or custodian, in any place within the jurisdiction of the court.~~

~~(j)~~ (i)A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(i)(1)an order that the minor be taken to the detention or shelter facility or other location designated by the court at the address specified pending a hearing or further order of the court;

(i)(2) the name, date of birth and last known address of the minor;

(i)(3) the reasons why the minor is being taken into custody;

(i)(4) a time limitation on the execution of the warrant;

(i)(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(i)(6) the date, county and court location where the warrant is being issued.

(i)(7) On verbal request from a state officer, peace officer, or child welfare worker or other authorized individual a warrant for custody may be issued telephonically when it appears necessary for the protection of the juvenile. Telephonic warrants shall be supported by an affidavit from the requesting authority the next court business day.

~~(k)~~ (j) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

~~(l)~~ (k)A peace officer who brings a minor to a detention or shelter facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(l) Return of service on a warrant shall be executed within 72 hours unless otherwise ordered by the Court.

Rule 14. Reception of referral; preliminary determination.

(a) Delinquency cases.

(1) A law enforcement officer or any other person having knowledge of or reason to believe facts that would bring a minor within the court's jurisdiction for delinquency may refer the minor to the court by submitting a written report and a request for a petition to the clerk, on forms prescribed by the court. An intake officer of the probation department shall make a preliminary determination, with the assistance of the prosecuting attorney if necessary, as to whether the facts reported are legally sufficient to give the court jurisdiction. If the facts appear legally sufficient such officer shall make a preliminary inquiry in accordance with standards prescribed by the court and Rule 15 to determine whether the interests of the public or the minor require further judicial action to be taken. If it is so determined, such officer may file a petition on behalf of the referring officer or person or may refer the matter to the prosecuting attorney for preparation of the petition.

(2) If the intake officer refuses after a demand by the complainant to file a petition, the complainant shall be informed of the reasons for the refusal and advised that he may submit the facts of the alleged delinquency in writing to the prosecuting attorney who shall determine whether a petition shall be filed.

(b) Cases involving neglect, dependency or abuse. Pursuant to Utah Code, Title 62A, Chapter 4a, complaints and reports involving the neglect, abuse or dependency of minors shall be directed to the nearest office of the Division of Child and Family Services for investigation, which agency may, with the assistance of the attorney general, file a petition with the court to initiate judicial proceedings.

(c) Coordination of cases pending in district court and juvenile court.

(1) Criminal and delinquency cases; Notice to the court.

(A) In a criminal case all parties have a continuing duty to notify the court of a delinquency case pending in juvenile court in which the defendant is a party.

(B) In a delinquency case all parties have a continuing duty to notify the court:

(i) of a criminal or delinquency case in which the respondent or the respondent's parent is a party; and

(ii) of an abuse, neglect or dependency case in which the respondent is the subject of the petition or the respondent's parent is a party.

(C) The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other pending case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

Rule 15. Preliminary inquiry; informal adjustment without petition.

(a) If the minor controverts the allegations in the referral or upon request by the minor, the effort at non-judicial adjustment shall terminate.

(b) In attempting to determine whether the interests of the minor or the public require that a petition be filed, the probation intake officer may conduct one or more interviews with the minor and at least one parent, guardian or custodian and may invite the referring party and the victim, if any, to attend or otherwise seek further information from them. Attendance at any such interview shall be voluntary and the probation intake officer may not compel the disclosure of any information or the visiting of any place. A non-judicial adjustment of the case shall not be attempted if the offense or condition alleged in the referral report as a basis for court jurisdiction is denied by the minor.

(c) In any such interview, the minor and the minor's parent, guardian or custodian must be advised that the interview is voluntary, that they have a right to have counsel present to represent the minor, that the minor has the right not to disclose any information, and that any information disclosed that could tend to incriminate the minor cannot be used against the minor in court ~~on the issue of guilt or innocence~~to prove whether the minor committed the offense alleged in the referral ~~,~~ but may be used as part of a dispositional recommendation to the court.

(d) If the probation intake officer concludes on the basis of the preliminary inquiry that non-judicial adjustment is appropriate and is authorized in such cases by the court, such officer may seek agreement with the minor and the parent, guardian or custodian to a proposed non-judicial adjustment. If such agreement is reached and the terms and conditions agreed upon are satisfactorily complied with by the minor and the minor's parent, guardian or custodian, the case shall be closed without petition. Such resolution of the case shall not be deemed an adjudication of jurisdiction of the court and shall not constitute an official record of juvenile

court action or disposition. A non-judicial adjustment may be considered by the probation intake officer in a subsequent preliminary inquiry and by the court for purposes of disposition only following adjudication of a subsequent delinquency involving the same minor.

(e) Attempts to affect non-judicial adjustment of a case shall not extend beyond 60 days without authorization by the court, and then for no more than an additional 60 days.

Rule 19. Responsive pleadings and motions.

(a) If the petition is not resolved at pretrial, an answer to a buse, neglect, and dependency petitions, petitions to terminate parental rights, or petitions for a change of custody must be filed ten days after pretrial or twenty-five days after service of the petition whichever comes first. The answer may be made orally at a pretrial hearing but otherwise must comply with Utah R. Juv. P. 34. Default against a party who fails to appear in person or by counsel at pretrial, or who fails to file a n answer may be entered pursuant to Utah R. Juv. P. 34.

(b) Before answering, the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.

(c) A party may file a written pleading or motion concerning the allegations of the petition before or at the hearing. Such pleading or a true and complete copy thereof shall be made available to the other parties of record. At the request of a party or on the court's own motion, the court shall set the matter for hearing to allow either party to respond to the issues raised in the pleading or motion.

(d) The court shall entertain and hear motions on any matter properly petitioned before it, and such motion practice shall be conducted according to the pertinent provisions of Utah Rules of Civil Procedure 7 and 12.

(e) Decisions on motions filed without a request for a hearing or by stipulation of the parties shall be rendered by the court without a hearing unless the court otherwise orders, in which event the clerk shall set a date and time for the hearing and notify the parties of record. Any party requesting a hearing must do so within 5 days of receipt of the motion or a hearing will be deemed waived.

(f) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing.

(g) All dispositive motions shall be heard at least fourteen days before the scheduled trial date unless otherwise ordered by the court. No dispositive motions shall be heard after that date without leave of the court.

(h) If a hearing has been requested and the non-moving party fails to file a memorandum in opposition, the moving party may withdraw the request or the court on its own motion may strike the request and decide the motion without oral argument.

(i) Motion for expedited hearing.

(1) A party may request an expedited hearing on any motion or petition filed with the court by filing a verified motion. The verified motion shall state with particularity the issues to be considered at the expedited hearing, the reasons an expedited hearing is necessary, and what efforts, if any, have been made to notify the other party of the request for expedited hearing.

(2) The court may grant a motion for expedited hearing on an ex parte basis.

(3) A motion for expedited hearing shall be granted if the facts alleged in the motion demonstrate good cause for an expedited hearing and otherwise appears appropriate.

(4) If the court grants the motion for expedited hearing, the hearing shall be set within ten days of the order.

(5) If the motion for an expedited hearing is granted, the moving party shall serve notice of the hearing upon all interested parties.

(j) Requests for review hearings or modification of court custody orders by agents of the Department of Human Services or one of its divisions, following the adjudication of a petition in which the department or division is a party, or by any other person or agency who is a party of record, shall be by written motion. Such motions shall state with particularity the legal basis for the motion and relief sought.

(k) In matters certified in the juvenile court from the district court, pleadings and motions shall be governed by the Utah Rules of Civil Procedure.

(l) In delinquency, traffic and adult criminal matters, motion practice shall be governed by the Utah Rules of Criminal Procedure.

Rule 37. Child Protective orders.

(a) Child Protective order proceedings are governed by 78-3h-101 et seq. Protective order proceedings may be commenced as an independent action by filing a petition. ~~A protective order may also be sought in a petition filed in the interest of an alleged child victim of abuse,~~

~~threatened abuse, or domestic violence.~~Any interested person may file a petition for a protective order on behalf of a child who has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned. The petitioner shall first make a referral to the division. If an immediate ex parte protective order is requested pending a hearing, the petition or an accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex parte order.

(b) If the petitioner is the agent of a public or private agency, including a law enforcement agency, the petition shall set forth the agent's title and the name of the agency that the petitioner represents.

(c) Petitions for protective orders by a public agency shall not be accepted by the clerk unless reviewed and approved by the attorney for the public agency, whose office shall represent the petitioner in such cases.

(d) The petitioner, if a private person or agency, and the respondent may be represented by retained counsel. Counsel may be appointed by the court for an indigent respondent who is a parent, guardian or custodian of the child alleged to be abused or threatened with abuse. If the court finds in the hearing that the allegations of the petition have been established, the court may assess petitioner's costs and attorney fees against the respondent. If the court finds that the petition is without merit, the respondent's costs and attorneys fees may be assessed against petitioner.

(e) If an ex parte order has been issued, the hearing must be held within 20 days excluding Saturdays, Sundays and legal holidays ~~unless the respondent stipulates to a longer period of time~~.

Rule 45. Pre-disposition reports and social studies.

(a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses. The report shall conform to the requirements in the Code of Judicial Administration.

(b) In delinquency cases, investigation of the minor and family for the purpose of preparing the pre-disposition report shall not be commenced before the allegations have been proven without the consent of the parties.

(c) The pre-disposition report shall not be submitted to or considered by the judge before the adjudication of the charges or allegations to which it pertains. If no pre-disposition report has been prepared or completed before the dispositional hearing, or if the judge wishes additional information not contained in the report, the dispositional hearing may be continued for a reasonable time to a date certain.

(d) For the purpose of determining proper disposition of the child and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the

child's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(e) The pre-dispositional report and social studies shall be ~~available for inspection and copying by~~ provided to the minor's counsel, the prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of the minor at least two days prior to the dispositional hearing. When the minor or the minor's parent, guardian or custodian are not represented by counsel, the court may limit inspection of reports by the minor or the minor's parent, guardian or custodian if the court determines it is in the best interest of the minor to do so.

Rule 46. Disposition hearing.

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor and parent, guardian or custodian, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-310, and Section 78-3a-311.

Rule 47. Reviews and modification of orders.

(a) Reviews.

(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the youth or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by the petitioner, if the review is a mandatory review, or by the party requesting the review to the supervising agency not less than 5 days prior to the review. Such notice shall also be given to the guardian ad litem, if one was appointed.

(2) No modification of a prior dispositional order shall be made at a report review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in open court or in writing to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the report to the guardian prior to the report review.

(b) Review hearings.

(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section 78-3a-903.

(4) Any individual, agency or institution vested with temporary legal custody or guardianship must make a motion for a review hearing at the expiration of 18 months from the date of the placement order as provided in Utah Code Ann. §78-3a-516.

(5) All cases~~,~~ which require periodic review hearings under Title 78, Chapter 3a shall be scheduled for court review not less than once every six months from the date of disposition.

~~(6) A regular review calendar may be set by the court to facilitate appearances by child placement agencies.~~

(c) Disposition reviews. Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-312, and Section 78-3a-313.

(e) Intervention plans.

(1) In all cases where the disposition order places temporary legal custody or guardianship of the youth with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arise.

(2) In cases where both parents have been permanently deprived of parental rights, the intervention plan shall identify efforts made by the child placing agency to secure the adoption of the youth and subsequent review hearings held until the youth has been adopted or permanently placed.

(f) Progress reports.

(1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

(2) The progress report shall contain the following:

(i) A review of the original conditions, which invoked the court's jurisdiction.

(ii) Any significant changes in these conditions.

(iii) The number and types of contacts made with each family member or other person related to the case.

(iv) A statement of progress toward resolving the problems identified in the intervention plan.

(v) A report on the family's cooperation in resolving the problems.

(vi) A recommendation for further order by the court.

~~(e~~(g) ~~)~~ In substantiation proceedings, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear, within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this Subdivision does not affect the finality of a judgment or suspend its operation.

Rule 52. Appeals

(a) An appeal may be taken from the juvenile court to the Court of Appeals from a final judgment, order, or decree, except as otherwise provided by law, by filing a Notice of Appeal with the clerk of the juvenile court within 30 days after the entry of the judgment, order, or decree appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.

(b) An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the Court of Appeals within 20 days after the entry of the order of the juvenile court.

(c) The Utah Rules of Appellate Procedure shall govern the appeal process, including preparation of the record and transcript.

(d) No separate order of the juvenile court directing a county to pay transcript costs is required to file a Request for Transcript in an appeal by an impecunious party who was represented during the juvenile court proceedings by court-appointed counsel.

(e) A party claiming entitlement to court-appointed counsel has a continuing duty to inform the court of any material changes that affect indigent status. If at any stage in the trial or appellate proceedings the court makes a finding that a party does not qualify, or no longer qualifies for indigent status, the court may order the party to reimburse the county or municipality for the reasonable value of the services rendered, including all costs.

Rule 53. Appearance and withdrawal of counsel

(a) Appearance. An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court that he is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) Withdrawal.

(1) Retained Counsel. Consistent with the Rules of Professional Conduct, a~~n~~ retained attorney may withdraw as counsel of record ~~in all cases except where~~ unless withdrawal may result in a delay of trial or unless a final appealable order has been entered. In such circumstances, ~~that case~~, a~~n~~ retained attorney may not withdraw except upon written motion and ~~without the~~ approval of the court.

(2) Court-appointed counsel. Court-appointed counsel may not withdraw as counsel of record except upon motion and signed order of the court. If the court grants appointed counsel's motion to withdraw, the court shall promptly appoint new counsel.

(3) If a motion to withdraw is filed after entry by the court of a final appealable judgment, order, or decree, the motion may not be granted unless counsel, whether retained or court-appointed, certifies in a written statement: (a) that the represented party in a delinquency proceeding has been advised of the availability of a motion for new trial or a certificate of probable cause and that, if appropriate, the same has been filed; and (b) that the represented party has been advised of the right to appeal and that, if appropriate, a Notice of Appeal and a Request for Transcript have been filed.

~~(2)~~ (4) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney by first class mail, to his or her last known address" and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

~~(3)~~ (5) A guardian ad litem may not withdraw except upon written motion and approval of the court.

~~(4) Representation by court appointed counsel shall terminate upon the entry of a final dispositional order without the filing of a formal withdrawal of counsel.~~

Rule 54. Continuances.

(a) Pre-trial and motion matters may be continued once upon stipulation of the parties and the guardian ad litem and notice to the clerk of the judge to whom the case is assigned. After the first continuance or once a matter has been set for trial, the matter may be continued only with the approval of the court.

(b) A second continuance may be requested by stipulation of the parties and the guardian ad litem, by motion in open court or by written motion clearly stating the grounds for the continuance. Notice of the hearing on the motion shall be served upon all counsel according to Rule 18. The motion and notice of hearing must be served at least 5 days prior to the date of the hearing, unless the court has ordered otherwise and a copy of the court's order is served upon counsel with the motion.

(c) Notwithstanding paragraphs (a) and (b), absent unavoidable circumstances, no continuance shall be granted in any child protection case except upon a showing by the moving party that the continuance will not adversely affect the interest of the child or cause a hearing to be held later than child welfare timelines established by statute.

(d) In sexual abuse cases involving minor victims, continuances may only be granted upon a written finding by the court, or written minute entry which shall include the reason(s) for the continuance.

(e) If the hearing is an "important criminal justice hearing" or an "important juvenile justice hearing" as defined by § 77-38-2 of which the victim has requested notification, the court should consider the impact of the continuance upon the victim.